

**COMMENTS OF COX CALIFORNIA TELCOM, LLC DBA COX COMMUNICATIONS
ON CRAMMING REPORTING REQUIREMENTS**

Cox commends the Commission and Staff for facilitating two workshops to address complex issues concerning cramming and the best way for reporting entities to report cramming complaints that are not resolved within 30 days of submission by subscribers. Cox believes that participants at the workshops gained a better understanding of the issues that reporting entities face in properly categorizing and reporting cramming complaints. Pursuant to the email of Ms. Gaylee Adell, dated August 11, 2006, in which Ms. Adell distributed the Consumer Protection & Safety Division (“CPSD”) Discussion Paper on the Workshop on Cramming Requirements (“Discussion Paper”), Cox respectfully and timely submits these comments.

Cox supports the Commission’s efforts to strike a balance between reasonable reporting requirements and the Commission having access to data necessary to assist it in identifying service providers that may engage in a pattern of cramming.¹ To ensure that the Commission adopts rules that strike an appropriate balance, Cox submits the following comments on the Discussion Paper and requests its proposed revisions both be reflected in the Staff Report that CPSD will submit to the Commission on October 13, 2006 (“Staff Report”) and adopted by the Commission.

I. Summary

In Decision 06-03-013, the Commission adopted rules clarifying carriers’ responsibilities in addressing cramming complaints. These rules are incorporated in General Order (“GO”) 168. In addition, the Commission adopted an aggressive consumer-protection program including twenty-three Commission-led initiatives, one of which requires the Commission to hold a workshop and adopt appropriate reporting requirements as contemplated in California Public Utilities Code² Section 2889.9.³

Section 2889.9 requires the Commission to adopt reporting requirements for billing telephone companies, billing agents and companies to submit complaint data regarding the billing for products and services provided by third parties on a subscriber’s telephone bill. Consistent with Section 2889.9(d), the Commission initially adopted reporting requirements in Decision 00-03-020 that were modified on re-hearing by Decision 00-11-015. While these decisions implement Sections 2890 and 2889.9, Decision 00-03-020 is silent on the basis underlying the

¹ See, First Cramming Workshop Transcript, p. 6.

² All sections references herein are to the California Public Utilities Code, unless otherwise noted.

³ D.06-03-013, pp. 91-92, Appendix A.

definitions and corresponding reporting requirements, and Decision 00-11-015 provides minimal guidance.

The Commission's cramming initiative should update existing rules and adopt reporting requirements that are consistent with Section 2889.9 and reporting entities' operational limitations. Importantly, to be consistent with both Sections 2890 and 2889.9 ("Statutes"), the Commission should adopt reporting requirements for complaints concerning unauthorized products and services, as opposed to "unauthorized charges." If a product or service is not authorized, it follows that the corresponding charges are not authorized and that cramming occurred. When a customer disputes charges for authorized products and services, it should not be categorized as a cramming complaint. Instead, it is most appropriately categorized as a billing dispute. Indeed, in such cases the subscriber is not disputing that the product or service was authorized, but instead, is disputing the amount or manner in which the charge was calculated.

In considering appropriate reporting requirements, the Staff Report should ensure that any such requirements are clear and concise so that reporting entities submit uniform data. As the reporting requirements will apply to Billing Telephone Companies and Billing Agents,⁴ the Staff and Commission should thoughtfully consider the customer service limitations that each type of entity faces. As discussed at the first cramming workshop, it is very difficult to track and categorize customer complaints in a manner that is useful for purposes of identifying the bad actors who intentionally engage in cramming.⁵ This is especially true in light of the various billing systems and customer care services that Billing Telephone Companies and Billing Agents provide.

Cox encourages the Commission to continue to work collaboratively with reporting entities to adopt reporting requirements that are reasonable, clear, concise and readily applied by any reporting entity.

II. Cramming Should Be Limited To Subscriber Complaints About Unauthorized Products and Services Not Resolved Within 30 Days.

At the workshops, CPSD correctly questioned and sought input on the proper definition of cramming and the meaning of "unauthorized charges." The Discussion Paper acknowledges "there was significant confusion and questions about the scope of the 'cramming' definition."⁶ Workshop discussions made clear that there is no consensus that a subscriber's complaint concerning the number of minutes charged for a given call should be deemed a cramming complaint or a billing dispute, for example. The Commission must adopt a clear and concise

⁴ The Discussion Paper defines Billing Agent and Billing Telephone Company on page 14.

⁵ First Cramming Workshop Transcript, pp. 24-25.

⁶ Discussion Paper, p. 4.

definition with which Billing Telephone Companies and Billing Agents can readily apply, and which also satisfies the mandate of Section 2889.9

Accordingly, the Commission should adopt a definition of cramming that focuses on unauthorized products and services, and not unauthorized charges. This proposed definition is consistent with the scope and purpose of both Sections 2890 and 2889.9 which focus on unauthorized products and services. For example, Section 2890(a) states:

A telephone bill may only contain charges for *products or services*, the purchase of which the subscriber has authorized. (Emphasis added).

Similarly, Section 2890(e) expressly requires the applicable entity to resolve complaints when the subscriber “did not authorize the purchase of the product or service associated with that charge.” Other subsections in Section 2890 also speak in terms of a customer authorizing a product or service (Section 2890(b)) and entities billing for products and services (Section 2890(d)(2)).

Additionally, Section 2889.9(a) prohibits persons and entities from misrepresenting its association with a telephone carrier in obtaining a “subscriber’s agreement to purchase the products or services of the person or corporation.” Further, with respect to the reporting requirements at issue here, Section 2889.9(d) speaks to “complaints made by subscribers regarding the billing for products and services that are charged on their telephone bills. . . .” The focus of the Statutes is on the subscriber authorizing the product or service, and not whether an individual charge was authorized. To be consistent with the Statutes, any definition of cramming adopted by the Commission must be limited to complaints about unauthorized products or services. This approach is reasonable and will ensure that reporting entities submit uniform data that the Commission may rely upon to determine the number of cramming complaints as compared to billing disputes.

The Discussion Report proposes that cramming include “customer complaints seeking to remove or reduce unauthorized charges.”⁷ This proposed definition is too broad and as discussed above, is inconsistent with the statute in that the proposed definition contemplates a reduction in charges. If a subscriber seeks to reduce an existing charge, she is not disputing authorization of the products and services, but instead disputing a rate or perhaps the length of a call. This type of complaint is a billing dispute. The subscriber did in fact authorize the product or service. If a subscriber does not authorize the purchase of products and services, then no charges for such products or services should appear on a subscriber’s bill. Accordingly, a Billing Telephone

⁷ Discussion Paper, p. 7.

Company or Billing Agent should remove charges associated with unauthorized products or services.

While the Discussion Paper correctly notes that complaints are for the “unauthorized addition of service or features”⁸, it improperly includes “situations where a consumer authorized a service, but was misled about the true cost.” Staff’s proposal is overbroad. This definition also conflicts with other proposals in the Discussion Report. For example, the Staff Report states cramming would include complaints about false or misleading charges⁹ but would not include complaints concerning a subscriber who was misled about a product.¹⁰ Such categorization of complaints is unreasonable and unworkable for Billing Telephone Companies and Billing Agents who must track and categorize complaints. Adopting Staff’s proposal will lead to inaccurate and inconsistent reporting. Thus, the reports will not be reliable for CPSD’s stated purpose.

The Legislature adopted the Statutes to ensure that subscribers are billed only for products and services they authorized. The Statutes do not address all billing disputes. There are other statutes that prohibit carriers from engaging in fraudulent and misleading business practices. To be consistent with the Statutes, the Commission must adopt a definition of a cramming complaint that is distinct from a billing dispute. Additionally, adopting a definition of cramming which focuses on unauthorized products and services is consistent with the cramming definitions adopted by other state commissions, as set forth in the Discussion Paper. Florida, Pennsylvania, Illinois, Ohio and New York all focus on charges corresponding to unauthorized products or services.¹¹

Upon adopting the proposed definition of cramming, the Staff Report should reflect other updated definitions included in the Discussion Paper. For example, the proposed definitions for “Authorization Required” and “Billing for Authorized Charges Only” would require minor updates to reflect that a service provider must obtain authorization for products and services, and that subscribers may be billed only for charges corresponding to authorized products and services.¹²

Limiting cramming to complaints concerning authorized products and services (as compared to unauthorized charges) is proper, and importantly, will not diminish consumer protections otherwise available to subscribers. For all the reasons above, the Staff Report should

⁸ Id., p. 7.(Can all the Discussion Paper cites be changed to “Id.” ?)

⁹ Discussion Paper, p. 8.

¹⁰ Discussion Paper, p. 10.

¹¹ See, Discussion Paper, pp. 6-7.

¹² Discussion Paper, p. 11.

reflect and the Commission should adopt the following definition of cramming for reporting purposes: customer complaints seeking to remove charges for unauthorized products or services.

III. The Definition of Complaint Should Reflect Disputes Concerning Unauthorized Products Or Services.

The Discussion Paper properly distinguishes between complaints and inquiries and requires reporting entities to report only those complaints that are unresolved after 30 days of submission from the subscriber. Again, it is critical that the Staff Report includes and the Commission adopts a clear and concise definition of a “complaint” to ensure that reporting entities submit accurate and uniform data.

The Discussion Paper defines a complaint as follows:

Any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed, either directly or indirectly, through a telephone company.”¹³

This definition unnecessarily focuses on unauthorized charges, whereas cramming should be defined in terms of unauthorized products and services, as discussed above in Article II. Cox recommends that the Commission adopt the following definition of “complaint” that concerns charges for unauthorized products and services.

Any written or oral communication from a subscriber that has been billed for a charge corresponding to products or services that the person or entity alleges were unauthorized and such charge was billed, either directly or indirectly, through a telephone company, and such communication is not resolved within 30 days of submission.

The Discussion Paper states that an inquiry may evolve to a complaint if the consumer objects to, denies or requests removal or reduction of a charge. While certain “inquiries” may evolve to cramming complaints, billing inquiries, by definition, cannot and do not evolve into a cramming complaint. Billing disputes are distinct from cramming complaints. For example, when a customer seeks to reduce a charge, the customer is admitting that he or she authorized the service, but is otherwise dissatisfied with the amount of charges billed for such service. Cox recommends that the Staff Report submitted to the Commission reflect the following with respect to inquiries evolving into cramming complaints:

Staff recognizes that an inquiry can evolve into a complaint at some point, and does become reportable as a cramming complaint if and when the consumer expresses her objection to being billed for products or services not authorized by the consumer or otherwise requests the removal of charges associated with

¹³ Discussion Paper, p. 12.

products and services not authorized by the consumer and such complaint is not resolved within 30 days of submission.¹⁴

IV. The Commission Should Adopt Rules That Ensure The Commission Obtains Accurate Data.

A. The Commission Should Clarify The Data To Be Included In Reports and Should Require Billing Telephone Companies and Billing Agents To Submit Cramming Reports On a Quarterly Basis.

The Discussion Paper details the specific data that Billing Telephone Companies and Billing Agents would be required to submit in monthly reports. Staff apparently seeks to collect data that would allow it to identify trends for cramming complaints or whether a particular service provider is engaged in cramming.¹⁵ However, certain proposed reporting criteria do not correspond to the same period of time, and if adopted, would result in the submission of meaningless data. The Staff Report should clarify the items for which Billing Telephone Companies and Billing Agents must report.

The Discussion Paper suggests that Billing Telephone Companies and Billing Agents should submit the following:

1. the total number of consumer cramming complaints received for that month that remain unresolved after 30 days;
2. the name, address, and telephone number of each entity that is the subject of cramming complaints;
3. the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received;
4. the total number of cramming complaints, relative to each service provider, that remain unresolved from when the complaint was initially received, within the following time periods:
 - a. between 30 and 60 days;
 - b. between 60 and 90 days; and
 - c. beyond 90 days.

As drafted, these reporting requirements are not concise enough to ensure that the Billing Telephone Companies and Billing Agents will consistently report the same data or that the data submitted is of any value. First, No. 1 requires reporting entities to submit the total number of complaints received for that month that remain unresolved; whereas No. 3 requires reporting entities to report the total number of subscribers billed by each entity for which cramming complaints are received without respect to a given time period. By collecting this type of data, Staff apparently seeks to collect data which would allow it to calculate a percentage of complaints based on the number of subscribers billed. However, if reporting entities report the data as

¹⁴ See, Discussion Paper, p. 12.

¹⁵ See, Second Workshop Transcript, p. 36.

requested, Staff will be comparing apples to oranges. To determine the percentage of complaints per subscribers billed, the Commission should collect the number of complaints received for a given billing interval and the number of subscribers billed during that same such billing interval.

For example, a Billing Telephone Company invoices a subscriber in August, the subscriber does not submit a complaint until October 1 and the complaint is unresolved as of November 1. In this example, the reporting entity should report the complaint as being unresolved for the month of October under No. 1 and the reporting entity should report the total number of subscribers billed for the month of August. This would provide a proper comparison of complaints received and subscribers billed for a given billing interval. However, No. 1 and No. 3 above do not specify this level of reporting. If the complaints and subscribers are not based on the same period of time, Staff will not be able to properly calculate the percentage of complaints.

Second, the Discussion Paper requests that reporting entities submit the name, address and telephone number of each entity that is the subject of the cramming complaint in No. 2. Cox recommends that this line item reflect complaints unresolved after 30 days. Both No. 1 and No. 4 include the reference to complaints unresolved for 30 days from the date received, and to be consistent, No. 2 should include the same reference:

2. the name, address, and telephone number of each entity that is the subject of cramming complaints that remain unresolved after 30 days from receipt.

In Decision 00-03-020, the Commission determined it was reasonable for Billing Telephone Companies and Billing Agents to submit quarterly reports tabulated on a monthly basis. The Discussion Paper, however, recommends that reporting entities submit reports on a monthly basis. Cox recommends that the Staff Report reflect quarterly reporting, calculated on a monthly basis. Monthly reporting fails to strike the necessary balance between the Commission's wish to have current data and the burden imposed on reporting entities. With monthly reporting, the Commission would have data on a more frequent basis, but such data could not (and should not) be used in isolation for purposes of determining whether a carrier is engaged in cramming. The Commission should review data from several months to determine if a pattern of cramming is apparent. Monthly reporting is very burdensome on reporting entities, yet, it does not provide any meaningful benefit to the Commission.

B. Reports Submitted By Billing Telephone Companies, Billing Agents And Third Party Service Providers Could Include Duplicative Data.

The Discussion Paper recommends that all Billing Telephone Companies and Billing Agents comply with the same reporting requirements.¹⁶ In addition, the Discussion Paper questions whether third party service providers provide customer service and if they should be required to report cramming complaints.¹⁷ Cox does not oppose the Commission requiring Billing Agents or third party providers to submit reports but notes that if all three entities submit reports, they may submit data for the same complaint for a given subscriber. Cox cautions the Commission that this could result in the collection of duplicate data and the double-counting of cramming complaints.

For example, when a Billing Telephone Company includes charges for a third party on the subscriber's telephone invoice, the Billing Telephone Company includes its customer service telephone number and it may include contact information for the third party provider. If a subscriber has a dispute, she may contact the Billing Telephone Company or the third party service provider to lodge a complaint. Both the Billing Telephone Company and the third party service provider could endeavor to resolve the same complaint. For example, a Billing Telephone Company receiving a complaint concerning third party products or services may refer the subscriber to the service provider responsible for generating the charges in dispute. If such service provider does not resolve the complaint, the subscriber may contact the Billing Telephone Company again. Depending on the circumstances, 30 days could elapse between the first and second calls from the subscriber. In this instance, the Billing Telephone Company would report the complaint as would the service provider because it also failed to resolve the dispute within 30 days.

Cox recommends the Staff Report reflect this issue and state that Staff will need to take reasonable steps to eliminate duplicate data when calculating the total number of complaints.

V. Any Document Retention Requirements Should Be Reasonable And Require Entities to Retain Documents That Will Can Be Used In The Future.

The Discussion Paper recommends that the Commission adopt record retention requirements similar to those D.00-03-020, as modified by D.00-11-015, and such requirements should be applied to Billing Telephone Companies (wireless and wireline carriers) and Billing Agents. However, rather than re-adopting existing reporting requirements, Staff and the Commission should determine whether existing requirements for cramming complaints (i.e.

¹⁶ Discussion Paper, p. 13.

¹⁷ Discussion Paper, p. 14.

complaints not resolved within 30 days from submission of the subscriber) are appropriate, especially in light of the burden imposed on Billing Telephone Companies and Billing Agents.

The Discussion Paper proposes that Billing Agents and Billing Telephone Companies retain “the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider” (Item No. 9). This requirement is equivalent to that adopted in D.00-03-020 and D.00-11-015, and yet neither of those decisions explain the basis for collecting such data. Nor does the Discussion Paper describe the purpose for collecting this data or how the Commission has or would use this data. It is unclear how dollars billed would be relevant to cramming. Whether a customer is crammed for \$1.00 or \$1,000.00 makes no difference. A cram may have taken place in either case. Additionally, this data would not show the extent to which a service provider may be cramming customers because some service providers may cram low amounts while others cram high amounts. Neither the total dollars billed nor the amount refunded is relevant to documenting or resolving cramming complaints, and therefore, Cox recommends that Item No. 9 be deleted.

Item No. 10 requires Billing Agents and Billing Telephone Companies to retain “the total number of telephone numbers billed by the billing telephone company or Billing Agents for each service provider.”¹⁸ This requirement should be deleted because it is duplicative of data that reporting entities will submit to the Commission as part of the regular cramming reports. Specifically, the Discussion Paper requires reporting entities to report “the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received.”¹⁹ The Commission should eliminate Item No. 10 as it is plainly duplicative of other data that reporting entities will submit to the Commission.

Furthermore, the Commission should delete proposed reporting requirements No. 9 and 10 because neither requirement would result in the collection of useful data. Capturing and retaining the total number of dollars billed and refunded and the total number of telephone numbers billed without any time limitation would be superfluous. To be meaningful, data retained should correspond to a given time period so that the Commission can calculate relevant percentages. As described in Article IV(A), data that does not correspond to a specific time period or corresponds to different time intervals than other data collected cannot be used for meaningful statistical purposes.

Staff should examine the retention requirements adopted in D.00-03-020 and D.00-11-015 to determine that such requirements are appropriate. Staff and the Commission should

¹⁸ Discussion Paper, p. 16.

¹⁹ Discussion Paper, p. 15.

require Billing Telephone Companies and Billing Agents to retain records that would serve a purpose in the future. Staff and the Commission should avoid imposing unnecessary retention requirements that provide no benefit to the Commission or the reporting entity.

VI. Service Providers Should Be Permitted to Opt-Out On A Quarterly and Annual Basis.

Cox supports the Discussion Paper's recommendation that service providers have the opportunity to opt-out of filing reports if there will be not reportable cramming complaints. The Discussion Paper recommends that service providers have the ability to opt-out on a monthly and on an annual basis. In Article II above, Cox recommends that reporting entities submit reports on a quarterly basis. Consistent with this proposal, Cox recommends that service providers have the opportunity to opt-out on a quarterly and annual basis.

VII. CONCLUSION

For all the reasons stated herein, Cox recommends that the Staff Report to be submitted to the Commission on October 13, 2006 reflect, and the Commission adopt, the following:

- Define cramming as customer complaints seeking to remove charges for unauthorized products or services;
- Define a cramming complaint as: “Any written or oral communication from a subscriber that has been billed for a charge corresponding to products or services that the person or entity alleges were unauthorized and such charge was billed, either directly or indirectly, through a telephone company and such communication is not resolved within 30 days of submission;”
- Adopt reporting requirements that are reasonable, clear and concise;
- Require reporting entities to submit complaint data on a quarterly basis;
- Require Staff to ensure complaint data is not duplicative;
- Adopt document retention requirements that are reasonable, clear and not duplicative; and
- Grant reporting entities the opportunity to opt-out on a quarterly and yearly basis.

Date: September 8, 2006

Respectfully submitted,
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PROOF OF SERVICE

I, Mark Lyons, the undersigned, hereby declare that, on September 8, 2006, caused a copy of the foregoing:

COMMENTS OF COX CALIFORNIA TELCOM, LLC DBA COX COMMUNICATIONS ON CRAMMING REPORTING REQUIREMENTS

in the above-captioned proceeding, to be served as follows:

[X] Via hand-delivery to Ms. Gaylee Adell

[X] Via hand-delivery to Mr. Jim Howard

[X] Via hand-delivery to Mr. Chris Poschl

[X] Via email to parties on the services lists for R.00-02-004

[X] Via email to appearances to the following:

Commissioner John Bohn

Commissioner Rachelle Chong

Bob Lane, Advisor to Commissioner Bohn

Robert Haga, Advisor to Commissioner Chong

Richard Clark, Director of Consumer Protection and Safety Division

John Leutza, Director of the Telecommunications Division

Paul Philips, Division of ratepayer Advocates

Theresa Cabral, VP Regulatory, Cox Communications

Andrew Karl, Sage Telecom

Sarah DeYoung, Executive Director, CALTEL

Ken Dawson, President, Integretel

Kelli Cubeta, Attorney for BSG Clearing

Dated: September 8, 2006 at San Francisco, California.

/s/ Mark Lyons

Mark Lyons